



Amendment No. 1  
of  
MA 9100 NA190000003  
for  
Data Collection and Reporting Tool  
between  
Shah Software, Inc. ("Contractor")  
and the  
City of Austin

1.0 The City hereby amends this Contract by adding an additional \$1,500 to Section 1.4, Compensation:

Term	Action Amount	Total Contract Amount
Original Term: – 12/31/19	01/01/19 \$22,200	\$22,200
Amendment No. 1: Administrative Increase	\$1,500	\$23,700

2.0 MBE/WBE goals were not established for this contract.

3.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

4.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: \_\_\_\_\_

*Jagat Shah*

Date: 01/29/2019

Printed Name: JAGAT SHAH

Authorized Representative

Shah Software, Inc.  
13601 Preston Road, Suite E450  
Dallas, TX 75240

Signature: \_\_\_\_\_

*Elisa Folco*  
1/29/19

Date: \_\_\_\_\_

Elisa Folco  
Contract Management Specialist IV

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Suite 310  
Austin, TX 78701

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)  
AND  
SHAH SOFTWARE, INC. (“Contractor”)  
FOR  
DATA COLLECTION AND REPORTING TOOL**

**CONTRACT NUMBER: MA 9100 NA190000003**

The City accepts the Contractor’s Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between Shah Software, Inc. having offices at 13601 Preston Road, Suite E450, Dallas, TX 75240 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City (“Effective Date”).

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number RFQ 9100 ELF2000.

**1.1 This Contract is composed of the following documents:**

- 1.1.1 This Contract
- 1.1.2 The City’s Solicitation, Request for Quote, RFQ 9100 ELF2000, including all documents incorporated by reference
- 1.1.3 Shah Software, Inc. Offer, dated September 11, 2018, including subsequent clarifications

**1.2 Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 This Contract
- 1.2.2 The City’s Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
- 1.2.3 The Contractor’s Offer as referenced in Section 1.1.3, including subsequent clarifications.

**1.3 Term of Contract.** This Contract shall become effective on January 01, 2019 (“Effective Date”) and shall remain in effect for an initial term of 12 months. The Contract may be extended beyond the initial term for up to 2 additional 12 month periods at the City’s sole option.

Contract Term		Contract Amount
01/01/19 - 12/31/19	Initial Term	\$ 22,200.00
01/01/20 - 12/31/20	Option 1	\$ 18,200.00
01/01/21 - 12/31/21	Option 2	\$ 18,200.00
Total		\$ 58,600.00

1.3.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

1.3.1.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under the Contract (not to exceed 120 calendar days unless mutually agreed to in writing).

1.4 **Compensation.** The Contractor shall be paid a total Not-to-Exceed amount of \$22,200 for the initial Contract term and \$18,200 for Option 1 and \$18,200 for Option 2, for a total Not-to-Exceed amount of \$58,600. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

Contract Term		Contract Amount
01/01/19 - 12/31/19	Initial Term	\$ 22,200.00
01/01/20 - 12/31/20	Option 1	\$ 18,200.00
01/01/21 - 12/31/21	Option 2	\$ 18,200.00
Total		\$ 58,600.00

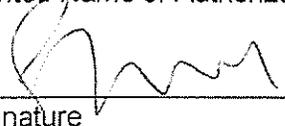
1.5 **Quantity of Work.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

SHAH SOFTWARE INC.

JAGAT SHAH  
Printed Name of Authorized Person

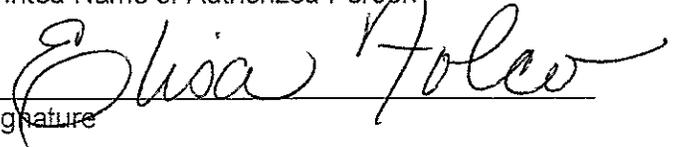
  
Signature

President  
Title:

10/3/2018  
Date:

CITY OF AUSTIN

Elisa Folco  
Printed Name of Authorized Person

  
Signature

Procurement Specialist IV  
Title:

10/03/2018  
Date:

**Requirements: To Be Completed and Included with Proposal. Submit in Excel Format.**

Use additional pages as needed

Req#	Requirement Description	Vendor Response State whether this requirement can be met by your solution (Yes or No). If yes, explain how:
2.1	<b>The solution should be hosted as Software as a Service.</b>	Yes. The system is hosted as 'Software as a Service'. The application is hosted on an application server. The database is on a database sever with Firewall preventing any unauthorized access.
2.2	<b>The solution should maintain the appropriate security controls for personally identifiable information and preferably utilize a routine 3rd party data security audit.</b>	Yes. See attached the SOC 2 audit report. The database and the application is hosted in partnership with Venture technology data center.
2.3	<b>The solution should include 50 user licenses.</b>	Yes. The proposed system includes 50 users
2.4	<b>The solution should include a mobile interface accessible from the internet which is fully functional on all mobile devices, including client intakes and edit functions.</b>	The proposed system includes a mobile interface as requested.
2.5	<b>The solution should allow image capture on a mobile device.</b>	Yes. Images can be captured and uploaded into client files. (Refer Pg 8 of attached product information)
2.6	<b>The solution should support attaching unlimited images and files to client records in support of eligibility requirements.</b>	Yes. Unlimited images and files can be attached to client records. (Refer Pg 8 of attached product information)
2.7	<b>The solution should allow collection of meta data in association with client record attachments.</b>	Yes. Meta data is collected as a part of client records. For e.g in storing of Client document, there is an option to name the file and also include a description of the documents being uploaded
2.8	<b>The solution should track and maintain records of all user activity and be logged, reportable and auditable.</b>	All user logins are recorded. Such activities can be reported. An 'audit' report is available as an option under the 'Report' menu option.

2.9	<b>The solution should track and maintain all client records without expiration.</b>	Yes. All client records are maintained. Even records flagged as 'deleted' or flagged as 'closed' are maintained. (Refer pg 12 of attached product information)
2.10	<b>The solution should allow a free text field for unlimited notes for each client record.</b>	Yes. At all places where notes are documented, a free text field is provided to allow users to document unlimited notes for each client record.
2.11	<b>The solution should offer a routine maintenance and support agreement that includes technical upgrades, service level agreements and technical assistance. Technical upgrades or modifications requested based on business need should be incorporated in a timely manner as specified without additional cost.</b>	Licensing agreement includes technical upgrades, tech support, toll free support, free webinars. Upgrades to meet with changing reporting requirements are also included.
2.12	<b>The solution should be able to load funds into the system and create balance sheets</b>	Yes. A menu option allows the user to add funds into the system. This option is found under System Maintenance / Add-Edit Funds'. A menu option is available to generate 'Balance Sheet' reports that show a running total of the fund balance remaining as payments are made from that funding program.
2.13	<b>The solution should be able to print out vouchers for notice of payment for vendors and client.</b>	Yes. Payment vouchers can be created and printed from within the system. (refer Pages 13, 14 & 15 of attached product information). A 'Balance Sheet' report tracks all payments made against the funds received and generates a running total of balance remaining.
2.14	<b>The solution should have the ability to compile reports based on all individual demographic data and collective group data as specified. Users should be allowed to drill down on all demographic data fields to allow for monthly data reconciliation as required by TDCHCA reporting.</b>	Yes. All necessary reports are included. Most of the reports are single button report and requires the user to enter mere date ranges. Each detailed item in unduplicated report is a hyperlink and allows the user to drill down to the individual client that contributes to the numbers on the report.
2.15	<b>The solution should collect National Performance Indicators (NPI) and report individually and collectively on each FNPI, and by client's individual and collective FNPI's. The solution should include a method to capture enrollments, services and outcomes on each client and household.</b>	Proposed system allows you to collect and report on FNPIs. Methods allow to capture enrollment, services and outcomes on each client.

2.16	<b>The solution should support follow up notes for follow up appointment or status and create a Microsoft Outlook calendar item in the City's email system.</b>	Followup notes and followup appointments can be created in the calendar built into the application. Customization will be required to create a Microsoft calendar item and integrate it into the city's email system.
2.17	<b>The solution should be able to send encrypted emails to clients</b>	This needs a detailed discussion. Customization will be required. Sending and viewing encrypted email messages requires both sender and recipient to share their digital ID or public key certificate. This means that you and the recipient each must send the other a digitally signed message, which enables you to add the other person's certificate to your Contacts. You can't encrypt email messages without a digital ID. Considering that City of Austin caters to thousands of client, this option has to be discussed in details.
2.18	<b>The solution should be able to print to mail (postal service).</b>	Yes. This is supported.
2.19	<b>The solution should be able to compile reports based on household or client identification numbers.</b>	Yes. This is supported.
2.20	<b>The solution should utilize the TDHCA calculation methodology to determine household income and poverty level. Income calculations field should allow for weekly, bi-weekly and semi-monthly amounts to be entered and auto populate individual monthly income as well as household income and poverty level.</b>	Yes. This is supported.
2.21	<b>The solution should allow the user to print a calculation worksheet showing data entered on each household member to determine household income and poverty level.</b>	Yes. This is supported. Refer Page 7 of attached product information.
2.22	<b>The solution should allow for case management assessment tracking over time, and show a collective report of progress over time of all case management questions using the case management matrix. This solution should preferably show a bar chart or line graph of the client's progress over time as a result of their participation in case management.</b>	Yes. This is supported. A report can be seen in attached produce information on Page 9.

2.23	<b>The solution should allow users to print documents with one click, instead of having to click through multiple fields to print.</b>	Yes. This is supported.
2.24	<b>The solution should include a safety feature that deters duplicate client entry and requires users to contact the system administrator before moving forward.</b>	Current version displays a pop-up alert when a duplicate client is detected but will allow the user to continue. In proposed version, customization will be provided where the user will be forced to enter a password before such a client is saved.
2.25	<b>The solution should contain edit functions that are well-designed, user-friendly, easily accessed and viewable in real time.</b>	All user logins are recorded. Such activities can be reported. An 'audit' report is available as a menu option.
2.26	<b>The solution should allow for a secure online application for clients.</b>	FASTRACK the online application module is included in cost proposal. This module allows clients to make secure online application, upload unlimited documents. Such online applications once submitted is immediately downloaded into the CaseManager-NewGen and can be previewed by the end user. If the online application meets with their approval, the online application can be moved to the main intake database with a single mouseclick.
2.27	<b>The solution should allow for an unlimited comments field under each question of the case management assessment.</b>	Yes. This is supported. For every question in Case Management Assessment, user can document unlimited notes.

## Attachment A: Price Proposal

Submit in Excel Format

Term: Initial Term 12 Months (Year 1) with two additional 12 month options (Year 2, 3)

### 1. HOSTING AND MAINTENANCE

#### 1.1 Initial Term (Year 1)

Description	Year 1 (Initial Term) Price	Detailed Breakdown (add a separate sheet if needed)
Hosting/Subscription/Licensing Fees	\$ 15,950.00	This is the annual licensing for the CaseManager NewGen system and includes Hosting, Subscription and Licensing fees for 50 user seat license
Maintenance Fees (If not included in above)*	\$ -	Included above in line # 11
Third Party tools/licenses (If not included in hosting/Subscription Fee)	\$ -	Included above in line # 11
Technical and User Support Fees (If not included in above)*	\$ -	Included above in line # 11
Third Party system data privacy and security evaluation, such as SAS70, SSAE16 or SOC1/2 (if not included in above)*	\$ -	Included above in line # 11
Disaster backup and recovery (If not included in the hosting fees)	\$ -	Included above in line # 11
Other Costs (if required and not included in above)**	\$ 6,250.00	Initial Setup, Configuration of FASTRACK. Annual licensing for FASTRACK \$2250 included for Year One
Year 1 Total	\$ 22,200.00	Includes CaseManager-NewGen plus FASTRACK

\*Indicate if cost is included elsewhere, and if so which line item it is included.

\*\*Include a detailed breakdown of other specific costs not referenced above as a supplemental to the cost proposal. Such as: minor revision upgrades to the installed system, major revision upgrades to the installed system, bug fix releases, product enhancement and new features

**1.2 Year 2, Year 3**

Description	Year 2 (Option 1) Price	Year 3 (Option 2) Price
Hosting/Subscription Fee	\$ 15,950.00	\$ 15,950.00
Maintenance Fee (If not included in above)*	Included in above	Included in above
Third party tools/licenses (If not included in hosting/Subscription Fees)	Included in above	Included in above
Technical and User Support Fee (If not included in above)*	Included in above	Included in above
Third Party system data privacy and security evaluation, such as SAS70, SSAE16 or SOC1/2 (if not included in above)*	Included in above	Included in above
Disaster backup and recover(If not included in the hosting fee)	Included in above	Included in above
Other Costs - Annual Licensing for FASTRACK - module for online applications	\$ 2,250.00	\$ 2,250.00
Per Year Total	\$ 18,200.00	\$ 18,200.00

\*Indicate if cost is included elsewhere, and if so which line item it is included.

\*\*Include a detailed breakdown of other specific costs not referenced above as a supplemental to the cost proposal. Such as: minor revision upgrades to the insalled system, major revision upgrades to the installed system, bug fix releases, product enhancement and new features

## 2. INITIAL CONFIGURATION AND IMPLEMENTATION

Proposer must submit a detailed breakdown of services for the implementation if not included in Initial Term of item 1 above. Provide a supplemental to the cost proposal detailing the cost structure and any assumptions being made (hourly, per diem, etc.) as well as costs for future consideration.

Description	Price
Implementation Services*	Included in Line 10
Legacy Data migration and / or scrubbing (if not included in above)*	Not applicable as City of Austin is already using CaseManager-NewGen
Training (if not included in above)* Includes travel and training cost	\$2,750
Other Costs (if required and not included in above)**	
Total Price	\$2,750

\*Indicate if cost is included elsewhere, and if so which line item it is included.

\*\*Include a detailed breakdown of other specific costs not referenced above as a supplemental to the cost proposal. Such as: minor revision upgrades to the installed system, major revision upgrades to the installed system, bug fix releases, product enhancement and new features

**3. ADDITIONAL SERVICES  
(CUSTOMIZATION, USER EXPERIENCE CONSULTANT, AND LICENSING FEE)**

Description	Year One (Initial Term) Price	Year Two (Option 1) Price	Year Three (Option 2) Price
Customization*	\$175 / hour of developmental work	\$175 / hour of developmental work	\$175 / hour of developmental work
User Experience Consultant**	\$125 / hour	\$125 / hour	\$125 / hour
Licensing/Seats ***	50 user seat licenses included in cost on line #10. Cost to add additional user seats above the first 50, is \$750 / three user seats		
Total Price	\$ -	\$ -	\$ -

\*Fixed hourly rate for custom development requested by the City for software functionality not included in the base software licensing agreement for years one through five. Provide a supplemental to the cost proposal detailing any additional information as well as other cost structures for future consideration.

\*\*Fixed hourly rate for User Experience Consultant. Provide a supplemental to the cost proposal detailing any additional information as well as other cost structures for future consideration.

\*\*\*Per License/Seat Include information on licensing model and type of user licenses proposed (concurrent, per seat, etc.) as well as any quantity driven price breaks, if applicable. Provide a supplemental to the cost proposal detailing any additional information as well as other cost structures for future consideration.

#### 4. ADDITIONAL COSTS (COSTS INVOLVED WITH YOUR PROPOSAL NOT COVERED IN THE SECTION ABOVE)

Include a detailed breakdown of other specific costs not referenced above on a separate sheet. Any customization or 3<sup>rd</sup> party software, or any packaged hardware referenced in the response to Requirements

##### Description

Customization required to prevent duplicate client entry - The current application displays a popup alert when a duplicate client is detected. However it does not prevent the user from ignoring the alert and proceed to add the duplicate client into the system. A customization will be developed which will not allow such clients to be saved unless a password is entered.

This customization will be included as a part of the next update and will have zero costs.

Customization required to encrypt emails. An estimate cannot be given on this option.

This needs a detailed discussion.

Sending and viewing encrypted email messages requires both sender and recipient to share their digital ID, or public key certificate. This means that you and the recipient each must send the other a digitally signed message, which enables you to add the other person's certificate to your Contacts. You can't encrypt email messages without a digital ID. Considering that City of Austin caters to thousands of client, this option has to be discussed in details.

**COMPANY NAME:**

SHAH SOFTWARE, INC.

**SIGNATURE OF AUTHORIZED REPRESENTATIVE:**



**PRINTED NAME:**

JAGAT SHAH

**EMAIL ADDRESS:**

JSHAH@SHAHSOFTWARE.COM

**PHONE:**

800-968-2748

## Section 0700: Reference Sheet

Responding Company's Name: **Shah Software, Inc.**

Company Name: City of Fort Worth, Community Action Partners

Contact Person: Marie Frances,

Email: marie.francis@fortworthtexas.gov

Address: 4200 South Freeway, # 2200, 1000 Throckmorton St, Fort Worth, TX 76102

Phone: 817-392-5798

Company Name: Central Texas Opportunities, Inc.

Contact Person: Hanna Adams,

Email: hadams@ctoinc.org

Address: P.O. Box 820, 2302 S Commercial, Coleman, TX 76834

Phone: 325-625-4167

Company Name: West Texas Opportunities, Inc.

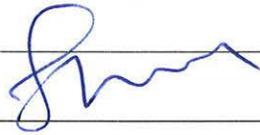
Contact Person: Jenny Gibson,

Email: j.gibson@gowto.org

Address: 603 N 4<sup>th</sup>, Lamesa, TX 79331

Phone: 806-872-8354

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: Shah Software Inc  
Company Address: 13601 Preston Rd, Suite E450  
City, State, Zip: Dallas, Tx 75240  
Federal Tax ID No.             
Printed Name of Officer or Authorized Representative: JAGAT SHAH  
Title: President  
Signature of Officer or Authorized Representative:   
Date: Sep 11 2018  
Email Address: Jshah@shahsoftware.com  
Phone Number: 800 968 2748

**\* Completed Price Proposal, section 0600 must be submitted with this signed Offer Sheet to be considered for award**



**ADDENDUM  
REQUEST FOR PROPOSAL  
CITY OF AUSTIN, TEXAS**

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**RFP: RFQ 9100 ELF2000**

**Addendum No: 1**

**Date of Addendum: 09/06/2018**

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This addendum is incorporating the following changes, questions and answers to the above-referenced RFP.

**1. Question:**

After reviewing the solicitation, we would like to get clarification on what kind of solution the department is looking for, as some of the requirements are unclear. Can you please point me to someone that we can have a discussion with to better understand this request?

**Answer:**

All questions related to the solicitation must be submitted in writing. The solution we are seeking is client database software that meets all data collection and reporting requirements for the Community Services Block Grant (CSBG). Vendors must have experience with Federal and State reporting requirements related to CSBG in order to meet the solicitation requirements.

**2. Question:**

Regarding the solicitation, we are not a CSG client database provider / data collection tool, so cannot address those requirements. We are, however, a reporting solution, so we can address those requirements. Given this, I am not sure we are what you are looking for, but would like your guidance on if/how you would like us to respond?

**Answer:**

The City needs a vendor who can provide a solution for both data collection and reporting who has experience with both Federal and State CSBG reporting requirements. We are not seeking vendors who can only respond to one portion of the solicitation.

**3. Question:**

Will there be a list of sku's released for this RFP.

**Answer:**

The City will not be providing a list of sku's.

**4. Question:**

Can provide pricing in our typical quote template as opposed to the pricing worksheet provided?

**Answer:**

No, please use the template provided. The template states you can add additional documentation, if needed.

**5. Question:**

Can we defer legal review until contracting? Our General Counsel feels it is premature to expect all invited vendors to review their legal terms when there's no guarantee of being awarded the contract.

**Answer:**

The City of Austin prefers that a vendor not take any exceptions to the City's terms and conditions. If a vendor needs to take exceptions, the City prefers the vendor submit the exceptions with the vendors proposal. Exceptions made by a vendor, may not be accepted by the City.

6. Question:

We have reviewed the **CITY OF AUSTIN PURCHASING OFFICE SUPPLEMENTAL PURCHASE PROVISIONS** document and cannot accept all terms as is and would therefore like to know if this document negotiable? If not will this discount or eliminate us from contention?

Answer:

The City of Austin prefers that a vendor not take any exceptions to the City's Supplemental Purchase Provisions. If a vendor needs to take exceptions, the City prefers the vendor submit the exceptions with the vendors proposal. Exceptions made by a vendor, may not be accepted by the City.

7. Question:

Req# 2.3 lists the user count at 50. CaseWorthy's pricing follows a concurrent/simultaneous user model. How many concurrent/simultaneous users do you anticipate?

Answer:

It is possible that at least 40 of the users may be on the system simultaneously. The solution should allow for this many users to be in the system at the same time.

8. Question:

Req# 2.7 speaks of "collection of meta data in association with client record attachments." Can you provide some examples of what type of meta data would need to be included?

Answer:

Examples: client addresses, phone numbers, dates of birth, social security or ID numbers.

9. Question:

Req# 2.12 regarding process of loading funds and creating balance sheets, we can show transactions by account, but can you please provide clarification or a sample of the type of balance sheet you're looking for?

Answer:

We would like to be able to run balance sheets by user, location, funds, type of assistance (e.g., rent, utility) and individual clients.

10. Question:

Req# 2.12 regarding process of loading funds and creating balance sheets, we can show transactions by account, but can you please provide clarification or a sample of the type of balance sheet you're looking for?

Answer:

We would like to be able to run balance sheets by user, location, funds, type of assistance (e.g., rent, utility) and individual clients.

11. Question:

Req# 2.18 Please provide any more information on "print to mail." Does this include labels, letter heads, etc.? Or something entirely different?

Answer:

Yes, this means labels and letters.

12. Question:

Req# 2.23 What types of documents are you desiring for print (e.g., forms, assessments, uploaded/scanned client documents)?

Answer:

Client intake forms, assessments, uploaded/scanned documents, service logs, outcomes and enrollments.

13. Question:

And to clarify from our attorney, he says we cannot agree to any of the three provisions in Section regarding the assignment of IP to the City. Is the City negotiable there, or will failure to agree to those specific terms essentially disqualify CaseWorthy from consideration? Section 8 A, B, and C

Answer:

These are negotiable.

14. Question:

Will there be a database conversion from the current system (Shah Case Manager NewGen)?

Answer:

Yes. We would like to retain all the current client data we currently have.

15. Question:

Software Terms U mentions interfaces. How many interfaces will be needed and to what systems? Will these be uni-direction, bi-directional, batch, and/or real-time?

Answer:

We are looking at a possible interface with a system the State of Texas is developing which would be a unidirectional system (us to them). We would like to have interfaces to Microsoft Office, especially the Outlook calendar. We are also interested in a possible interface to an electronic health records system. Real time would be ideal and likely unidirectional for any system we would look at purchasing.

16. Question:

What is the expected budget for this project?

Answer:

We are requesting a quote from all vendors based on the specifications outlined.

17. Question:

In addition to CSBG data collection and reporting, are there any other compliance reporting needs?

Answer:

We also use this system to develop reports for both City and other State performance measures.

18. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURES affixed below, this Addendum is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

APPROVED BY: Elisa Folco, Procurement Specialist IV  
Purchasing Office

Date: 09/06/2018

ACKNOWLEDGED BY:

Shah Software,  
Vendor Name

  
Authorized Signature

SEP 11, 2018  
Date

**RETURN A COPY OF THIS ADDENDUM to the City of Austin Purchasing Office with your proposal.  
Failure to do so may constitute grounds for rejection of your offer.**

**City of Austin, Texas**  
**Section 0800**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**

**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 11<sup>th</sup> day of September, 2018

CONTRACTOR Shah Software  
Authorized Signature [Signature]  
Title President

**SCOPE OF WORK**  
**SOLICITATION NUMBER: RFQ 9100 ELF2000**  
**SECTION 0500**

**1.0 Purpose**

Austin Public Health (City) seeks a Texas Department of Housing & Community Affairs (TDHCA) Community Services Block Grant (CSBG) data collection and reporting tool. CSBG guidance is here <https://tdhca.state.tx.us/community-affairs/csbg/guidance.htm>

The City currently uses the Shah Case Manager NewGen.

**2.0 Contractor Requirement**

**2.1 Requirements**

**2.1.1 Record Keeping**

**2.1.1.1** Contractor shall maintain fiscal and programmatic records and supporting documentation for all expenditures made under this Contract in accordance with the UGMS and Section III, Common Rule: State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart C – Post Award Requirements, \_42. For purposes of compliance, all associated documentation must be readily available, whether stored electronically or hard copy to justify compliance with program rules and regulations.

**2.1.1.2** Open Records. Contractor acknowledges that all information collected, assembled, or maintained by Contractor pertaining to this Contract is subject to the Texas Public Information Act, Chapter 552 of Texas Government Code and must provide citizens, public agencies, and other interested parties with reasonable access to all records pertaining to this Contract subject to and in accordance with the Texas Public Information Act.

**2.1.1.3** Contractor shall give the US Health and Human Services Department (HHS), the US General Accounting Office, the Texas Comptroller, the State Auditor's Office, Texas Department of Housing and Community Affairs and the City of Austin, or any of their duly authorized representatives, access to and the right to examine and copy, on or off the premises of the Contractor, all records pertaining to this Contract. Such right to access shall continue as long as the records are retained by Contractor. Contractor agrees to cooperate with any examination conducted pursuant to this subsection.

**2.1.1.4** Contractor agrees to maintain such records in an accessible location for the greater of (i) the time period described in the state Uniform Grant Management Standards, Chapter III "State Uniform Administrative Requirements for Grants and Cooperative Agreements", Subpart C- Post Award Requirements § \_42: (ii) if notified by the City of Austin or Texas Department of Housing and Community Affairs in writing, the date that the final audit is accepted with all audit issues resolved to the Department's satisfaction; (iii) if any litigation claim, negotiation, inspection or other action has started before the expiration of the required retention period records must be retained until completion of the action and

resolution of all issues which arise under it; (iv) a date consistent with any other period required by the performed activity reflected in federal or state law or regulation. Contractor agrees to cooperate with any examination conducted pursuant to this Subsection. Upon termination of this Contract, all records are property of the City of Austin and the Texas Department of Housing and Community Affairs.

**2.1.1.5** Contractor agrees to give the City of Austin and the Texas Department of Housing and Community Affairs the right to directly review, monitor and/or audit the operational and financial performance and/or records of work performed under this Contract.

## **2.1.2 Non-Discrimination and Equal Opportunity**

**2.1.2.1** A person shall not be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of or in connection with any program or activity funded in whole or in part with funds made available under this Contract, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief.

**2.1.2.2** Contractor agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965 as amended, and its implementing regulations at 41 CFR Part 60.

**2.1.2.3** Contractor must meet the standards under (i) Section 504 of the Rehabilitation Act of 1973 Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by the U. S. Department of Justice at 28 CFR Parts 35 and 36. Contractor shall operate each program or activity receiving financial assistance so that the program or activity, when viewed in its entirety, is readily accessible and usable by individuals with disabilities. Contractor is also required to provide reasonable accommodations for persons with disabilities.

## **2.1.3 Lobbying**

**2.1.3.1** No federal appropriated funds have been paid or will be paid, by or on behalf of the contractor or the City of Austin, Austin Public Health Department, to any person for influencing or attempting to influence an officer or employee of an agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any federal contract, grant, loan, or cooperative agreement.

**2.1.3.2** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress or an

employee of a member of congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit standard form – LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions

**2.1.3.3 “CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION”**

- (1) The contractor certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) If the contractor is unable to certify to any statements in this certification, such contractor shall attach an explanation to this proposal.

Signature \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

JAGAT SHAH

President

SEP 11, 2018

**Section 0835: Non-Resident Bidder Provisions**

Company Name Shah Software, Inc

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: Resident Bidder

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.  
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.
- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: NA Which State: \_\_\_\_\_

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: NA

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By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City

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harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. **WORKFORCE**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
  - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
  - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. **INVOICES:**

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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13. **PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. delivery of defective or non-conforming Deliverables by the Contractor;
  - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
  - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
  - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

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No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. **FINAL PAYMENT AND CLOSE-OUT:**

A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

B. The making and acceptance of final payment will constitute:

- i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
- ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. **SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. **AUDITS and RECORDS:**

A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

B. Records Retention:

- i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
- ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
- iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

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**18. SUBCONTRACTORS:**

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
  - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
  - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
  - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
  - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
  - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

**19. WARRANTY-PRICE:**

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

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20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.
  - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
  - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
  - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
  - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
  - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
  - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

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required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

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30. **DELAYS:**

- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY:**

- A. Definitions:
  - i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
    - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
    - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
  - ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

32. **INSURANCE:** (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

- A. **General Requirements.**
  - i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
  - ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

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City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

**B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions**

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

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Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY**: In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

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39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

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**48. DISPUTE RESOLUTION:**

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**49. JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

**50. INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

**51. HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

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Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

52. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

54. **EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

55. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

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- iii. "Domestic end product" means-
    - (1) An unmanufactured end product mined or produced in the United States; or
    - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
  - iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
  - v. "Foreign end product" means an end product other than a domestic end product.
  - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to Elisa Folco at [Elisa.Folco@austintexas.gov](mailto:Elisa.Folco@austintexas.gov).

2. **INSURANCE:** Insurance is required for this solicitation.

- A. **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Contract. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the Contract.

- B. **Cyber Liability Insurance:** Coverage of not less than \$2,000,000 each claim and \$4,000,000 annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

3. **TERM OF CONTRACT:**

- A. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months. The Contract may be extended beyond the initial term for up to 2 additional 12 month periods at the City's sole option. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract. Any hold over period will not exceed 120 calendar days unless mutually agreed on by both parties in writing.

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- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
  - D. Prices are firm and fixed for the first 12 months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.
4. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.
5. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Public Health
Address	HHASDAPInvoices@austintexas.gov

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

6. **NON-SOLICITATION:**

- A. During the term of the Contract, and for a period of six (6) months following termination of the Contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.
- B. In the event that a breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 100 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.
- C. During the term of the Contract, and for a period of six (6) months following termination of the Contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.
- D. In the event that a breach of Paragraph C occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) 100 percent of the employee's annual compensation while employed by the Contractor.

**CITY OF AUSTIN  
PURCHASING OFFICE  
SUPPLEMENTAL PURCHASE PROVISIONS**

7. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).
- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
  - B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.
8. **OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the Deliverables.
- A. **Patents:** As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
  - B. **Copyrights:** As to any Deliverable containing copyrighted subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such Deliverables, provided however, that nothing in this Paragraph 36 shall negate the City's sole or joint ownership of any such Deliverables arising by virtue of the City's sole or joint authorship of such Deliverables. Should by operation of law, such Deliverables not be considered work made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of Austin) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.
  - C. **Additional Assignments:** The Contractor further agrees to, and if applicable, cause each of its employees to execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns, and nominees, the sole and exclusive right, title, and interest in and to the Deliverables, The Contractor's obligations to execute acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 36 A., B., and C. shall continue after the termination of this Contract with respect to such Deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the Deliverables, but should arise to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph above.

**CITY OF AUSTIN  
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SUPPLEMENTAL PURCHASE PROVISIONS**

9. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Maria Allen - APH Manager, Neighborhood Services Unit

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[Maria.Allen@austintexas.gov](mailto:Maria.Allen@austintexas.gov)

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512.972.5086

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The following sections are hereby included:

Add the following definitions:

**“Affiliate”** means, including but not limited to, (i) City’s parent subsidiaries, partnerships, joint ventures, franchisees, assigns, business partners, contractors, subcontractors and consultants, controlling, controlled by or under common control of City as they may change from time to time and (ii) Users, as they may change from time to time.

**“Amendment”** means any written document executed by both Parties that modifies the terms of this Master Software as a Service Agreement, including referenced attachments.

**“Authorized Persons”** means the service provider’s employees, contractors, subcontractors or other agents who need to access the City’s personal data to enable the service provider to perform the services required.

**“Change Order Request”** means the written document provided by Client to Provider requesting changes to Provider’s obligations under this Agreement.

**“Change Order Response”** means the written document provided to Client by Provider in response to Client’s Change Order Request.

**“City”** means any government or government agency that uses these terms and conditions. The term is a placeholder for the government or government agency.

**“City Data”** means all data created, received, or in any way originating with the City, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in an way originated with the City, whether such data or output is stored on the City’s hardware, the service provider’s hardware or exists in any system owned, maintained or otherwise controlled by the City or by the service provider.

**“City Identified Contact”** means the person or persons designated in writing by the City to receive security incident or breach notification.

**“Confidential Information”** means all written or oral information, disclosed by either Party to the other, related to the operation of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential.

**CITY OF AUSTIN  
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**“Data Breach”** means the unauthorized access by a non-authorized person/s that results in the use, disclosure or theft of a City’s unencrypted personal data.

**“FACTA”** means the **Fair and Accurate Credit Transaction**

**Act. “Illicit Code”** has the meaning set forth in 0300IT

Paragraph 22.

**“Personally Identifiable Health Information”** means information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.<sup>1</sup>

**“Non-Public Data”** means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the City because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

**“Non-subscription Services”** means the services provided to Client by Provider under this Agreement that are not included in the definition of Subscription Services, Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to Client by Provider under this Agreement, together with all documentation provided by or otherwise required of Provider for any of the consulting, implementation, customization or other services it provides.

**“Personal Data”** means data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver’s license, passport), financial account information, including account number, credit or debit card numbers, or protected health information (PHI) relating to a person.

**“Provider Information”** means all techniques, algorithms and methods or rights thereto owned by or licensed to Provider during the term of this Agreement and employed by Providers in connection with the Subscription Services and the Non-subscription Services Provided to Client.

**“Provider Software”** means software that was developed or licensed to Provider independent of this Agreement and which Provider utilizes to provide the Subscription Services or the Non-subscription Services.

**“Security Incident”** means the potentially unauthorized access by non-authorized persons to personal data or non-public data the service provider believes could reasonably result in the use, disclosure or theft of a City’s unencrypted personal data or non-public data within the possession or control of the service provider. A security incident may or may not turn into a data breach.

**“Service Level Agreement” (SLA)** means a written agreement between both the City and the service provider that is subject to the terms and conditions in this document that unless otherwise agreed to includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures.

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**“Service Levels”** means the performance specifications for work performed by Provider under a SaaS Subscription Schedule or Statement of Work.

**“Software-as-a-Service” (SaaS)** means the capability provided to the City to use the provider’s applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin- client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.<sup>2</sup>

**“SaaS Software Application”** and **“SaaS Software”** mean the computer software listed on a SaaS Subscription Schedule to which Provider has granted Client access and use as part of the Subscription. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Provider develops or deploys during the term of this Agreement, together with all documentation provided by or otherwise required of Provider for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.

**“SaaS Subscription Schedule”** means the document, executed by both Parties that sets out the Parties’ rights and obligations with respect to Client’s access to and use of the SaaS Software Application.

**“Statement/Scope of Work”** means a written statement in a solicitation document or contract that describes the City’s service needs and expectations

**“Subscription Services”** means Client’s access to and use of and Provider’s provision of the SaaS Software Applications and other services listed on a SaaS Subscription Schedule and in accordance with the terms and conditions set forth in the SaaS Subscription Schedule.

**“Third Party”** means any natural person or legal entity other than Provider and Client.

**“Transition Date”** means the date upon which it is established to Client’s satisfaction that the SaaS Software Application is stable enough to support Client’s production processing.

**“User”** means Client’s employees, agents, consultants, outsourcing companies, contractors and others who are authorized by Client to access and use the SaaS Software Applications and any part or portion of the Subscription Services or non-Subscription Services in the performance of their duties for Client.

**“User Information”** means all information directly or indirectly obtained from Users accessing the SaaS Software Applications where such information is obtained by Provider or by any of its employees, representatives, agents or any Third Parties having contractual privity with Provider or who are under Provider’s supervision or control.

**“Work Product”** means, except for the Provider Information, all deliverable and other materials, products or modifications developed or prepared for Client by Provider under this Agreement, including without limitation, any integration software or other software, all data, program images and text viewable on the Internet, any HTML code relating thereto, or any program code, including program code created, developed or prepared by Provider under or in support of the performance of its obligations under this Agreement, including manuals, training materials and documentation, but excluding the Provider Software.

**CITY OF AUSTIN  
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**10. SOFTWARE TERMS:**

- A. In the event of termination of the contract, the service provider shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data.
- B. During any period of service suspension, the service provider shall not take any action to intentionally erase any City data.
- C. In the event of termination of any services or agreement in its entirety, the service provider shall not take any action to intentionally erase any City data for a period of:
  - 10 days after the effective date of termination, if the termination is in accordance with the contract period
  - 30 days after the effective date of termination, if the termination is for convenience
  - 60 days after the effective date of termination, if the termination is for cause. After such period, the service provider shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control.
- D. The City shall be entitled to any post-termination assistance generally made available with respect to the services unless a unique data retrieval arrangement has been established as part of the SLA.
  - The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the City.
- E. Data Location: The service provider shall provide its services to the City and its end users solely from data centers in the U.S. Storage of City data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to store City data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The service provider shall permit its personnel and contractors to access City data remotely only as required to provide technical support. The service provider may provide technical user support only on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in this contract.
- F. Import and Export of Data: The City shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the service provider. This includes the ability for the City to import or export data to/from other service providers.
- G. Data Ownership: The City will own all right, title and interest in its data that is related to the services provided by this contract. The service provider shall not access City user accounts or City data, except
  - (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract, or (4) at the City's written request.
- H. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of City information and comply with the following conditions:

**CITY OF AUSTIN  
PURCHASING OFFICE  
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1. The service provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.
  2. All data obtained by the service provider in the performance of this contract shall become and remain property of the City.
  3. All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this contract.
  4. Unless otherwise stipulated, the service provider shall encrypt all non-public data at rest and in transit. The City shall identify data it deems as non-public data to the service provider. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.
  5. At no time shall any data or processes – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the service provider or any party related to the service provider for subsequent use in any transaction that does not include the City.
  6. The service provider shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.
- I. Compliance with Accessibility Standards: The service provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.
- J. Security: The service provider shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the service provider. For example: virus checking and port sniffing – the City and the service provider shall understand each other's roles and responsibilities.
- K. Security in Compliance with Chapter 521 of the Texas Business and Commerce Code: Service provider shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against the unlawful use or disclosure of personal information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.
- L. Security Incident or Data Breach Notification: The service provider shall inform the City of any security incident or data breach.
- M. Incident Response: The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the City should be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

**CITY OF AUSTIN  
PURCHASING OFFICE  
SUPPLEMENTAL PURCHASE PROVISIONS**

- N. Security Incident Reporting Requirements: The service provider shall report a security incident to the appropriate City identified contact immediately as defined in the SLA.
- O. Breach Reporting Requirements: If the service provider has actual knowledge of a confirmed data breach that affects the security of any City content that is subject to applicable data breach notification law, the service provider shall (1) promptly notify the appropriate City identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.
- P. Breach Responsibilities: This section only applies when a data breach occurs with respect to personal data withing the possession of control of service provider.
- Q. The service provider, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
- R. The service provider, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. The service provider shall:
- (1) cooperate with the City as reasonably requested by the City to investigate and resolve the data breach,
  - (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive action taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- S. Unless otherwise stipulated, if a data breach is direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law – all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by service provider based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.
- T. Responsibilities and Uptime Guarantee: The service provider shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environments are the responsibilities of the service provider. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.
- U. **Web Services:** The service provider shall use Web services exclusively to interface with the City's data in near real time when possible.
- V. **Encryption of Data at Rest:** The service provider shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data, unless the City approves the storage of personal data

**CITY OF AUSTIN  
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SUPPLEMENTAL PURCHASE PROVISIONS**

on a service provider portable device in order to accomplish work as defined in the statement of work.



**CITY OF AUSTIN, TEXAS**  
Purchasing Office  
**REQUEST FOR QUOTATION (RFQ)**  
**OFFER SHEET**

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**SOLICITATION NO:** RFQ 9100 ELF2000

**COMMODITY/SERVICE DESCRIPTION:** Data Collection and Reporting Tool

**DATE ISSUED:** August 20, 2018

**PRE-RESPONSE CONFERENCE TIME AND DATE:** N/A

**REQUISITION NO.:** RQM 9100 18080800682

**LOCATION:** N/A

**COMMODITY CODE:** 92045, 9204520, 9563575

**QUOTE DUE PRIOR TO:** September 14, 2018, 2:00 pm, Local Time

**FOR CONTRACTUAL AND TECHNICAL ISSUES CONTACT THE FOLLOWING:**

Elisa Folco  
Procurement Specialist IV

**Phone:** (512) 974-1421

**E-Mail:** Elisa.Folco@austintexas.gov

**SUBMIT YOUR QUOTE VIA E-MAIL TO ELISA.FOLCO@AUSTINTEXAS.GOV**

The Vendor agrees, if this Offer is accepted within 90 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

**\*\*\*SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT\*\*\***

**This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.**

<b>SECTION NO.</b>	<b>TITLE</b>	<b>PAGES</b>
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	10
0500	SCOPE OF WORK	11
	REQUIREMENTS – Must be completed and submitted with Offer	1
0600	PRICE PROPOSAL – Must be completed and submitted with Offer	1
0700	REFERENCE SHEET – Complete and submit if required	2
0800	NON-DISCRIMINATION CERTIFICATION AND NON-RETALIATION CERTIFICATION	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete and submit	1

**\* Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of these Sections are available, on the Internet at the following online address:**

[http://www.austintexas.gov/financeonline/vendor\\_connection/index.cfm#STANDARDBIDDOCUMENTS](http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS)

**If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8<sup>th</sup> Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.**

**The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.**

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Federal Tax ID No. \_\_\_\_\_

Printed Name of Officer or Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature of Officer or Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**\* Completed Price Proposal, section 0600 must be submitted with this signed Offer Sheet to be considered for award**

**CITY OF AUSTIN  
PURCHASING OFFICE  
SUPPLEMENTAL PURCHASE PROVISIONS**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to Elisa Folco at [Elisa.Folco@austintexas.gov](mailto:Elisa.Folco@austintexas.gov).

2. **INSURANCE:** Insurance is required for this solicitation.

- A. **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Contract. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the Contract.

- B. **Cyber Liability Insurance:** Coverage of not less than \$2,000,000 each claim and \$4,000,000 annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3)invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

3. **TERM OF CONTRACT:**

- A. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months. The Contract may be extended beyond the initial term for up to 2 additional 12 month periods at the City's sole option. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract. Any hold over period will not exceed 120 calendar days unless mutually agreed on by both parties in writing.

**CITY OF AUSTIN  
PURCHASING OFFICE  
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- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
  - D. Prices are firm and fixed for the first 12 months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.
4. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.
5. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Public Health
Address	HHASDAPInvoices@austintexas.gov

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

6. **NON-SOLICITATION:**

- A. During the term of the Contract, and for a period of six (6) months following termination of the Contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.
- B. In the event that a breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 100 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.
- C. During the term of the Contract, and for a period of six (6) months following termination of the Contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.
- D. In the event that a breach of Paragraph C occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) 100 percent of the employee's annual compensation while employed by the Contractor.

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7. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).
- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
  - B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.
8. **OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the Deliverables.
- A. **Patents:** As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
  - B. **Copyrights:** As to any Deliverable containing copyrighted subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such Deliverables, provided however, that nothing in this Paragraph 36 shall negate the City's sole or joint ownership of any such Deliverables arising by virtue of the City's sole or joint authorship of such Deliverables. Should by operation of law, such Deliverables not be considered work made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of Austin) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.
  - C. **Additional Assignments:** The Contractor further agrees to, and if applicable, cause each of its employees to execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns, and nominees, the sole and exclusive right, title, and interest in and to the Deliverables, The Contractor's obligations to execute acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 36 A., B., and C. shall continue after the termination of this Contract with respect to such Deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the Deliverables, but should arise to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph above.

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9. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Maria Allen - APH Manager, Neighborhood Services Unit

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[Maria.Allen@austintexas.gov](mailto:Maria.Allen@austintexas.gov)

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512.972.5086

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The following sections are hereby included:

Add the following definitions:

**“Affiliate”** means, including but not limited to, (i) City’s parent subsidiaries, partnerships, joint ventures, franchisees, assigns, business partners, contractors, subcontractors and consultants, controlling, controlled by or under common control of City as they may change from time to time and (ii) Users, as they may change from time to time.

**“Amendment”** means any written document executed by both Parties that modifies the terms of this Master Software as a Service Agreement, including referenced attachments.

**“Authorized Persons”** means the service provider’s employees, contractors, subcontractors or other agents who need to access the City’s personal data to enable the service provider to perform the services required.

**“Change Order Request”** means the written document provided by Client to Provider requesting changes to Provider’s obligations under this Agreement.

**“Change Order Response”** means the written document provided to Client by Provider in response to Client’s Change Order Request.

**“City”** means any government or government agency that uses these terms and conditions. The term is a placeholder for the government or government agency.

**“City Data”** means all data created, received, or in any way originating with the City, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in an way originated with the City, whether such data or output is stored on the City’s hardware, the service provider’s hardware or exists in any system owned, maintained or otherwise controlled by the City or by the service provider.

**“City Identified Contact”** means the person or persons designated in writing by the City to receive security incident or breach notification.

**“Confidential Information”** means all written or oral information, disclosed by either Party to the other, related to the operation of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential.

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**“Data Breach”** means the unauthorized access by a non-authorized person/s that results in the use, disclosure or theft of a City’s unencrypted personal data.

**“FACTA”** means the **Fair and Accurate Credit Transaction**

**Act. “Illicit Code”** has the meaning set forth in 0300IT

Paragraph 22.

**“Personally Identifiable Health Information”** means information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.<sup>1</sup>

**“Non-Public Data”** means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the City because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

**“Non-subscription Services”** means the services provided to Client by Provider under this Agreement that are not included in the definition of Subscription Services, Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to Client by Provider under this Agreement, together with all documentation provided by or otherwise required of Provider for any of the consulting, implementation, customization or other services it provides.

**“Personal Data”** means data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver’s license, passport), financial account information, including account number, credit or debit card numbers, or protected health information (PHI) relating to a person.

**“Provider Information”** means all techniques, algorithms and methods or rights thereto owned by or licensed to Provider during the term of this Agreement and employed by Providers in connection with the Subscription Services and the Non-subscription Services Provided to Client.

**“Provider Software”** means software that was developed or licensed to Provider independent of this Agreement and which Provider utilizes to provide the Subscription Services or the Non-subscription Services.

**“Security Incident”** means the potentially unauthorized access by non-authorized persons to personal data or non-public data the service provider believes could reasonably result in the use, disclosure or theft of a City’s unencrypted personal data or non-public data within the possession or control of the service provider. A security incident may or may not turn into a data breach.

**“Service Level Agreement” (SLA)** means a written agreement between both the City and the service provider that is subject to the terms and conditions in this document that unless otherwise agreed to includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures.

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**“Service Levels”** means the performance specifications for work performed by Provider under a SaaS Subscription Schedule or Statement of Work.

**“Software-as-a-Service” (SaaS)** means the capability provided to the City to use the provider’s applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin- client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.<sup>2</sup>

**“SaaS Software Application”** and **“SaaS Software”** mean the computer software listed on a SaaS Subscription Schedule to which Provider has granted Client access and use as part of the Subscription. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Provider develops or deploys during the term of this Agreement, together with all documentation provided by or otherwise required of Provider for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.

**“SaaS Subscription Schedule”** means the document, executed by both Parties that sets out the Parties’ rights and obligations with respect to Client’s access to and use of the SaaS Software Application.

**“Statement/Scope of Work”** means a written statement in a solicitation document or contract that describes the City’s service needs and expectations

**“Subscription Services”** means Client’s access to and use of and Provider’s provision of the SaaS Software Applications and other services listed on a SaaS Subscription Schedule and in accordance with the terms and conditions set forth in the SaaS Subscription Schedule.

**“Third Party”** means any natural person or legal entity other than Provider and Client.

**“Transition Date”** means the date upon which it is established to Client’s satisfaction that the SaaS Software Application is stable enough to support Client’s production processing.

**“User”** means Client’s employees, agents, consultants, outsourcing companies, contractors and others who are authorized by Client to access and use the SaaS Software Applications and any part or portion of the Subscription Services or non-Subscription Services in the performance of their duties for Client.

**“User Information”** means all information directly or indirectly obtained from Users accessing the SaaS Software Applications where such information is obtained by Provider or by any of its employees, representatives, agents or any Third Parties having contractual privity with Provider or who are under Provider’s supervision or control.

**“Work Product”** means, except for the Provider Information, all deliverable and other materials, products or modifications developed or prepared for Client by Provider under this Agreement, including without limitation, any integration software or other software, all data, program images and text viewable on the Internet, any HTML code relating thereto, or any program code, including program code created, developed or prepared by Provider under or in support of the performance of its obligations under this Agreement, including manuals, training materials and documentation, but excluding the Provider Software.

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**10. SOFTWARE TERMS:**

- A. In the event of termination of the contract, the service provider shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data.
- B. During any period of service suspension, the service provider shall not take any action to intentionally erase any City data.
- C. In the event of termination of any services or agreement in its entirety, the service provider shall not take any action to intentionally erase any City data for a period of:
  - 10 days after the effective date of termination, if the termination is in accordance with the contract period
  - 30 days after the effective date of termination, if the termination is for convenience
  - 60 days after the effective date of termination, if the termination is for cause. After such period, the service provider shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control.
- D. The City shall be entitled to any post-termination assistance generally made available with respect to the services unless a unique data retrieval arrangement has been established as part of the SLA.
  - The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the City.
- E. Data Location: The service provider shall provide its services to the City and its end users solely from data centers in the U.S. Storage of City data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to store City data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The service provider shall permit its personnel and contractors to access City data remotely only as required to provide technical support. The service provider may provide technical user support only on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in this contract.
- F. Import and Export of Data: The City shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the service provider. This includes the ability for the City to import or export data to/from other service providers.
- G. Data Ownership: The City will own all right, title and interest in its data that is related to the services provided by this contract. The service provider shall not access City user accounts or City data, except
  - (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract, or (4) at the City's written request.
- H. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of City information and comply with the following conditions:

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1. The service provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.
  2. All data obtained by the service provider in the performance of this contract shall become and remain property of the City.
  3. All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this contract.
  4. Unless otherwise stipulated, the service provider shall encrypt all non-public data at rest and in transit. The City shall identify data it deems as non-public data to the service provider. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.
  5. At no time shall any data or processes – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the service provider or any party related to the service provider for subsequent use in any transaction that does not include the City.
  6. The service provider shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.
- I. Compliance with Accessibility Standards: The service provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.
- J. Security: The service provider shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the service provider. For example: virus checking and port sniffing – the City and the service provider shall understand each other's roles and responsibilities.
- K. Security in Compliance with Chapter 521 of the Texas Business and Commerce Code: Service provider shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against the unlawful use or disclosure of personal information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.
- L. Security Incident or Data Breach Notification: The service provider shall inform the City of any security incident or data breach.
- M. Incident Response: The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the City should be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

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- N. Security Incident Reporting Requirements: The service provider shall report a security incident to the appropriate City identified contact immediately as defined in the SLA.
- O. Breach Reporting Requirements: If the service provider has actual knowledge of a confirmed data breach that affects the security of any City content that is subject to applicable data breach notification law, the service provider shall (1) promptly notify the appropriate City identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.
- P. Breach Responsibilities: This section only applies when a data breach occurs with respect to personal data withing the possession of control of service provider.
- Q. The service provider, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
- R. The service provider, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. The service provider shall:
- (1) cooperate with the City as reasonably requested by the City to investigate and resolve the data breach,
  - (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive action taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- S. Unless otherwise stipulated, if a data breach is direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law – all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by service provider based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.
- T. Responsibilities and Uptime Guarantee: The service provider shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environments are the responsibilities of the service provider. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.
- U. **Web Services:** The service provider shall use Web services exclusively to interface with the City's data in near real time when possible.
- V. **Encryption of Data at Rest:** The service provider shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data, unless the City approves the storage of personal data

**CITY OF AUSTIN  
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on a service provider portable device in order to accomplish work as defined in the statement of work.

**SCOPE OF WORK**  
**SOLICITATION NUMBER: RFQ 9100 ELF2000**  
**SECTION 0500**

**1.0 Purpose**

Austin Public Health (City) seeks a Texas Department of Housing & Community Affairs (TDHCA) Community Services Block Grant (CSBG) data collection and reporting tool. CSBG guidance is here <https://tdhca.state.tx.us/community-affairs/csbg/guidance.htm>

The City currently uses the Shah Case Manager NewGen.

**2.0 Contractor Requirement**

**2.1 Requirements**

**2.1.1 Record Keeping**

- 2.1.1.1** Contractor shall maintain fiscal and programmatic records and supporting documentation for all expenditures made under this Contract in accordance with the UGMS and Section III, Common Rule: State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart C – Post Award Requirements, \_42. For purposes of compliance, all associated documentation must be readily available, whether stored electronically or hard copy to justify compliance with program rules and regulations.
- 2.1.1.2** Open Records. Contractor acknowledges that all information collected, assembled, or maintained by Contractor pertaining to this Contract is subject to the Texas Public Information Act, Chapter 552 of Texas Government Code and must provide citizens, public agencies, and other interested parties with reasonable access to all records pertaining to this Contract subject to and in accordance with the Texas Public Information Act.
- 2.1.1.3** Contractor shall give the US Health and Human Services Department (HHS), the US General Accounting Office, the Texas Comptroller, the State Auditor's Office, Texas Department of Housing and Community Affairs and the City of Austin, or any of their duly authorized representatives, access to and the right to examine and copy, on or off the premises of the Contractor, all records pertaining to this Contract. Such right to access shall continue as long as the records are retained by Contractor.  
Contractor agrees to cooperate with any examination conducted pursuant to this subsection.
- 2.1.1.4** Contractor agrees to maintain such records in an accessible location for the greater of (i) the time period described in the state Uniform Grant Management Standards, Chapter III "State Uniform Administrative Requirements for Grants and Cooperative Agreements", Subpart C- Post Award Requirements § \_42: (ii) if notified by the City of Austin or Texas Department of Housing and Community Affairs in writing, the date that the final audit is accepted with all audit issues resolved to the Department's satisfaction; (iii) if any litigation claim, negotiation, inspection or other action has started before the expiration of the required retention period records must be retained until completion of the action and

resolution of all issues which arise under it; (iv) a date consistent with any other period required by the performed activity reflected in federal or state law or regulation. Contractor agrees to cooperate with any examination conducted pursuant to this Subsection. Upon termination of this Contract, all records are property of the City of Austin and the Texas Department of Housing and Community Affairs.

**2.1.1.5** Contractor agrees to give the City of Austin and the Texas Department of Housing and Community Affairs the right to directly review, monitor and/or audit the operational and financial performance and/or records of work performed under this Contract.

## **2.1.2 Non-Discrimination and Equal Opportunity**

**2.1.2.1** A person shall not be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of or in connection with any program or activity funded in whole or in part with funds made available under this Contract, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief.

**2.1.2.2** Contractor agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965 as amended, and its implementing regulations at 41 CFR Part 60.

**2.1.2.3** Contractor must meet the standards under (i) Section 504 of the Rehabilitation Act of 1973 Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by the U. S. Department of Justice at 28 CFR Parts 35 and 36. Contractor shall operate each program or activity receiving financial assistance so that the program or activity, when viewed in its entirety, is readily accessible and usable by individuals with disabilities. Contractor is also required to provide reasonable accommodations for persons with disabilities.

## **2.1.3 Lobbying**

**2.1.3.1** No federal appropriated funds have been paid or will be paid, by or on behalf of the contractor or the City of Austin, Austin Public Health Department, to any person for influencing or attempting to influence an officer or employee of an agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any federal contract, grant, loan, or cooperative agreement.

**2.1.3.2** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress or an

employee of a member of congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit standard form – LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions

**2.1.3.3 “CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION”**

- (1) The contractor certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) If the contractor is unable to certify to any statements in this certification, such contractor shall attach an explanation to this proposal.

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Signature

Printed

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Section 0700: Reference Sheet**

Responding Company Name \_\_\_\_\_

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

1. Company's Name \_\_\_\_\_

Name and Title of Contact \_\_\_\_\_

Project Name \_\_\_\_\_

Present Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone Number (\_\_\_\_) \_\_\_\_\_ Fax Number (\_\_\_\_) \_\_\_\_\_

Email Address \_\_\_\_\_

2. Company's Name \_\_\_\_\_

Name and Title of Contact \_\_\_\_\_

Project Name \_\_\_\_\_

Present Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone Number (\_\_\_\_) \_\_\_\_\_ Fax Number (\_\_\_\_) \_\_\_\_\_

Email Address \_\_\_\_\_

3. Company's Name \_\_\_\_\_

Name and Title of Contact \_\_\_\_\_

Project Name \_\_\_\_\_

Present Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone Number (\_\_\_\_) \_\_\_\_\_ Fax Number (\_\_\_\_) \_\_\_\_\_

Email Address \_\_\_\_\_

**City of Austin, Texas**  
**Section 0800**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**  
**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Title \_\_\_\_\_

**Section 0835: Non-Resident Bidder Provisions**

Company Name \_\_\_\_\_

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: \_\_\_\_\_

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.  
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: \_\_\_\_\_ Which State: \_\_\_\_\_

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: \_\_\_\_\_